

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

September 2, 2004

Call to order: Chairwoman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:52 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairwoman Randolph, Commissioners Phil Blair, Sheridan Downey, Pam Karlan, and Tom Knox were present.

Item #1. Public Comment.

Karen Daniels Meade, Chief of the Political Reform Division with the Secretary of State's Office, announced that yesterday they added committee telephone numbers to their website.

Consent Calendar

Commissioner Downey had questions about item # 7 on the Consent Calendar, so Chairwoman Randolph pulled it from consent.

Commissioner Blair moved approval of the following items:

Item #2. In the Matter of International Brotherhood of Electrical Workers Committee on Political Education, Sponsored by International Brotherhood of Electrical Workers, and Edwin D. Hill, FPPC No. 02/165. (26 counts).

Item #3. In the Matter of International Brotherhood of Painters and Allied Trades Political Action Together Legislative and Educational Committee—Contribution Account and James Williams, FPPC No. 04/115. (11 counts).

Item #4. In the Matter of Yellowstone Development, LLC, FPPC No. 04/322. (1 count).

Item #5. In the Matter of Tom Gilmore & Associates, LLC, FPPC No. 02/1049. (1 count).

Item #6. In the Matter of No on Prop A and Rodney Scott, FPPC No. 01/562. (1 count).

Item #8. In the Matter of Jim Rosecrans, FPPC No. 02/803. (2 counts).

Item #9. In the Matter of Naresh Kamboj, FPPC No. 02/547. (2 counts).

Item #10. In the Matter of Kurt Scholberg, FPPC No. 02/739. (1 count).

Item #11. In the Matter of Rafael Torres, FPPC No. 02/455. (3 counts).

Item #12. Failure to Timely File Statements of Economic Interests – Streamlined Program

- a. ***In the Matter of Karl Thurmond, FPPC No. 03/861.*** (1 count).
- b. ***In the Matter of Jonathan Zasloff, FPPC No. 03/688.*** (1 count).
- c. ***In the Matter of Raffi Kradjian, FPPC No. 03/076.*** (1 count).
- d. ***In the Matter of Miguel Garcia, FPPC No. 03/441.*** (1 count).
- e. ***In the Matter of Thomas Waterson, FPPC No. 03/715.*** (1 count).
- f. ***In the Matter of Sandy Simon-Wargo, FPPC No. 03/356.*** (1 count).
- g. ***In the Matter of Cedrice Miller, FPPC No. 03/727.*** (1 count).
- h. ***In the Matter of Athena Aaron, FPPC No. 03/728.*** (1 count).
- i. ***In the Matter of James Porras, FPPC No. 03/720.*** (1 count).
- j. ***In the Matter of Anthony Daysog, FPPC No. 03/738.*** (1 count).
- k. ***In the Matter of Bill Warmerdam, FPPC No. 03/529.*** (1 count).

Item #13. Failure to Timely File Late Contribution Reports – Proactive Program.

- a. ***In the Matter of Suzanne Saperstein, FPPC No. 2004-142.*** (1 count).

Commissioner Karlan seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chairwoman Randolph voted “Aye.” The motion carried by a 5-0 vote.

Item Removed From Consent

Item #7. *In the Matter of Ronald Bullard, FPPC No. 02/597.* (2 counts).

In response to a question, Commission Counsel Jeffery A. Sly explained that Ronald Bullard, a member of the Dental Examiner’s Board since 1992, had filed his annual SEI for 2001 and 2002. Commissioner Downey then responded that the Commission is considering a stipulation of \$4,000 in fines for violating the filing requirements and that the legislature gives the Commission the right to go up to \$10,000. He asked whether the commission has any injunctive power to make Mr. Bullard file.

Enforcement Chief Steve Russo responded that the Commission has the authority to issue a cease and desist order, which the Commission rarely has done. The Commission would then have to seek enforcement for that order through a Superior Court.

In response to a question, Mr. Sly stated that Mr. Bullard filed his 1992-2000 forms, as well as his 2003 form. Mr. Sly explained that Mr. Bullard had some personal circumstances during those two years (2001-02) which he believed caused his failure to file.

Commissioner Downey suggested that \$4,000 is a pretty hefty fine for missing two SEI's, but that it is also very unusual that Mr. Bullard has filed SEI's before and after these violations occurred. Commissioner Downey wondered if the legislature suggests to us that this is particularly egregious unless there was a personal circumstance.

Mr. Sly noted that the Department of Consumer Affairs amended their conflict-of-interest code, and members of the Board of Dental Examiners are no longer required to file. Last year was their final year of filing. Mr. Bullard is a dentist and a dental examiner.

Commissioner Downey said, "I guess I'm ready to go along with the \$4,000 stipulation," and moved to approve the amount.

Commissioner Karlan seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chairwoman Randolph voted "Aye." The motion carried by a 5-0 vote.

Item #14. Fair Political Practices Commission v. Committee for Clean Safe Creeks, Susan A. Pino, and Rick L. Callender; FPPC No. 2000/793.

Chairwoman Randolph commented that if none of the Commissioners had any comments or questions on this item, there was no action needed.

None of the Commissioners had comments.

Item #15. Annual Technical Clean-up Package.

Legal Analyst Kelly Winsor explained that all of the proposed amendments to the regulations are technical or non-substantive in nature, and that the reasons for the proposed amendments are addressed in the staff memorandum. She mentioned that there was no pre-notice hearing, as part of the streamlined process. While non-substantive changes do not require the normal APA notice for public comment, the proposed amendments to the individual regulations were noticed on July 30, 2004. One comment letter was received and reviewed by staff, but staff believes that only the amendments proposed in the staff memorandum are warranted.

Ms. Winsor recommended adoption of the proposed amendments to the regulations specified in the staff memorandum.

Commissioner Blair moved to approve the regulation amendments.

Commissioner Karlan seconded.

Commissioners Blair, Downey, Karlan, Knox, and Chair Randolph voted, “Aye.” The motion carried by a 5-0 vote.

Item #16. September 2004 Work Plan Revisions.

Assistant General Counsel John Wallace explained that there is one change to the 2005 Regulation Calendar. Mr. Wallace noted that regulation 18700 is intended to include conforming changes caused by the various other conflict-of-interest rule changes that were adopted by the Commission. According to Mr. Wallace, there may be an interested person’s meeting, if necessary, and a pre-notice hearing, but at this point, there is no plan for either meeting because the proposed regulation amendments are simply conforming changes and will go directly to adoption as noted on the Calendar.

Mr. Wallace also mentioned the pending project on regulation 18901, the mass mailing regulation, saying that an interested person’s meeting was held, partially at the urging of Senator Ross Johnson’s office. Mr. Wallace said there was good discussion about the regulation, but the consensus from that meeting was that now is probably not a good time to reopen the regulation. Mr. Wallace advises that staff’s recommendation at this time is to take no action on regulation 18901.

Commissioner Karlan moved to approve the updated work plan.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chairwoman Randolph voted, “aye.” The motion carried by a 5-0 vote.

Item #17. Legislative Report.

Executive Director Mr. Krausse explained the status of the 2004 session bills in the following way:

- AB 890, the “21st Century fix” requiring earlier reporting of contributions flowing into political party committees, was enrolled and sent to the Governor.
- AB 1197 would have amended the definition of designated employee to include certain school employees. It was more of a duplicative measure which was not necessary because it was already addressed in the adoption of conflict-of-interest codes. The California Teacher’s Association (CTA) was the sponsor of the bill and did not pursue it after the FPPC amended one of its sponsored bills addressing the Bay Delta Authority

issue to amend the same section. If both bills had gone to the Governor, there would have been a conflict. It was good of the CTA to agree not to pursue their bill.

- AB 1980 (Assemblywoman Wolk) would have codified a \$5,000 contribution limit for all state candidate controlled measure ballot committees. It would have set a different level for the regulation that the Commission had adopted several months ago. This bill passed the Senate but failed in the Assembly and did not go to the Governor.
- AB 2842 (Leno), one of the two personal loan limit bills, was not pursued by the author, who went on as a co-author of Senator Johnson's bill, which was enrolled to the Governor.

Chairwoman Randolph clarified that the Leno bill was the Commission's first choice, even though the Commission supported both Leno's bill and Johnson's bill.

Mr. Krausse agreed, saying that Commission staff called Senator Johnson's office to ask if they would include Leno's language in Johnson's bill, but they could not do this due to it being late in the session. Mr. Krausse said he believes that Johnson's bill solves the problem with the statute.

Mr. Krausse continued to explain the status of the following bills:

- SB 604, sponsored by the Commission, changes the definition of cumulative contributions and other technical changes, and resolves the issues in the advertising disclosure section that were at issue in *Levine v. FPPC*.
- Senator Perata's SB 1340, also sponsored by the Commission, was enrolled to the Governor.
- SB 1351, by Senator Soto, would have rendered adult children reportable and disqualifying financial interests to public officials. This bill died in the Appropriations Committee, but the author may pursue this again next year, without the "adult children" language.
- SB 1353, which has language to fix the Cal Fed/Bay Delta Authority problem, was enrolled to the Governor. The Governor's office indicated that this bill may be signed earlier than some of the other bills.
- SB 1458, which set a one-year timeline on the FTB to complete audits that they perform under the Political Reform Act, and for the Commission to pursue civil actions arising out of those audits, was enrolled to the Governor as well.

Chairwoman Randolph asked, and Mr. Krausse clarified that SB 1458 does not affect administrative actions.

- Senator Alpert's SB 1712, on which the Commission did not have a position, was enrolled to the Governor, as was Senator Karnette's SB 1849, which lowers the threshold for electronic reporting from \$50,000 to \$25,000.

Item #18 Executive Director's Report.

Executive Director Mark Krausse had nothing further to add.

Item #19 Litigation Report.

General Counsel Luisa Menchaca noted that on item #4, *FPPC v. American Civil Rights Coalition*, the Third District Court of Appeals affirmed the lower court ruling denying a motion to dismiss the lawsuit filed by the FPPC.

Chairwoman Randolph praised the enforcement staff for their work.

Commissioner Blair asked when staff expects the *Agua Caliente* case to go to trial.

Ms. Menchaca said that one year probably would not be realistic.

Chairwoman Randolph explained that the next step is to conduct a hearing and briefing before the California Supreme Court, and then the case may go on to the U.S. Supreme Court. She believes that it is unclear as to when the matter will be resolved.

Commissioner Blair asked when the case will be presented in front of the State Supreme Court, whether it will be years or months before it is heard.

Luisa Menchaca said that the hearing date is unknown, but it could be within a year or a year and a half before the matter is heard by the State Supreme Court.

Commissioner Blair guessed that it would be another year or year and a half after that before being heard by the U.S. Supreme Court, and Chairwoman Randolph agreed.

The meeting adjourned at 10:08 a.m.

Dated: September 30, 2004.

Respectfully submitted,

Whitney Barazoto
Commission Assistant

Approved by:

Chair Randolph